

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMONE D'ANGELO ARMSTRONG,

Defendant-Appellant.

UNPUBLISHED

April 28, 2009

No. 283949

Wayne Circuit Court

LC No. 07-020140-FC

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of carjacking, MCL 750.529a, armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to concurrent prison sentences of 12½ to 25 years for carjacking, 12½ to 25 years for armed robbery, and one to five years for felon in possession of a firearm, all consecutive to a two-year prison sentence, with jail credit of 157 days, for felony-firearm. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant presents various arguments challenging the trial court's aiding and abetting instructions. This issue has been waived for appeal because defendant's trial attorney stated at trial that he was satisfied with the jury instructions as given. Michigan case law holds that an affirmative endorsement of jury instructions waives any future claim of error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004). Further, even if we considered the issue, reversal is unwarranted. To give a particular jury instruction, there must be supporting evidence. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). A trial court's determination whether a jury instruction is applicable to the facts of a case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). In this case, the evidence showed that defendant and two other men acted in concert to rob the complainant of her car, cell phone, and purse, while defendant pointed a gun at her, which supported an instruction on aiding and abetting for the crimes of carjacking, armed robbery, and felony-firearm. The trial court did not abuse its discretion in instructing the jury on that theory of defendant's guilt. Moreover, the instructions, while not perfect, ultimately and fairly presented the elements of aiding and abetting. Imperfect instructions do not give rise to error necessitating reversal if they fairly present the issues being tried and sufficiently protect the defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

Defendant next contends that he was denied his right of allocution, which requires a sentencing court to give the defendant an opportunity to advise the court of any circumstances he believes the court should consider in passing sentence. MCR 6.425(E)(1)(c). Defendant failed to raise this argument at sentencing. Therefore, we review it for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). In *People v Petit*, 466 Mich 624, 636; 648 NW2d 193 (2002), the Supreme Court found that the defendant was given the opportunity to address the court when the court asked if there was "anything further." In this case, the sentencing court specifically stated defendant's name when it asked: "Mr. Armstrong, anything you wish to add, correct, modify or say before I proceed with sentencing, Mr. Noble?" We find that the fact that the court ended the inquiry by also addressing defense counsel by name did not cancel out its prior address to defendant. The court continued by asking several times in general if there was "anything else" before it imposed defendant's sentence. These inquiries made by the sentencing court provided defendant with several opportunities to speak on his own behalf if he so desired. Therefore, defendant was properly afforded the opportunity to speak and was not denied the right of allocution. We also find that, because defendant was properly afforded the opportunity to speak, his counsel was not ineffective for failing to protect defendant's right of allocution. *Matuszak*, *supra* at 58.

Finally, defendant argues that the sentencing court should have granted him additional credit for the days he served in jail while facing charges in another case. The charges in that other case arose within 24 hours of this case and involved use of the same white Ford Taurus that was driven by one of the accomplices in this case. Defendant argues that the cases were related, and he should have been given additional jail credit for the time served in the second case. Defendant's argument fails because the sentencing credit statute specifically provides that a defendant is entitled to credit for time served "for the offense of which he is convicted." MCL 769.11b; see *People v Adkins*, 433 Mich 732, 750; 449 NW2d 400 (1989). We also note that, while the Taurus was involved in the two criminal cases, the cases entailed two separate and unrelated criminal offenses. Although in *Adkins*, *supra* at 751 n 10, the Supreme Court stated in dicta that a sentencing judge is not prohibited from granting sentence credit for time spent incarcerated for other offenses if the court thought such action was appropriate, there was no indication in this case that the sentencing court thought it would be appropriate to give defendant additional credit. Therefore, defendant is not entitled to a recalculation of the credit given for days served in jail for his other case.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly